BUSINESS & LABOR
EXHIBIT NO. 1
DATE 3-26-09
BILL NO. HB 390

Additional Information for HB 390 -- 3/25/09
Prepared by Pat Murdo, Committee Researcher

Four issues: 48 hour question, Scope of Practice vs. Facility Licensing, Insurance/Money, Collaboration

48-hour issue -- difference between facility licensing issue and insurance payment issue

Statute for insurance:

33-22-133. Coverage for minimum hospital stay following childbirth. *(1) For the purposes of this section, "attending health care provider" means a person licensed under Title 37 who is responsible for providing obstetrical and pediatric care to a mother and newborn infant.*

(2) Each group or individual policy, certificate of disability insurance, subscriber contract, membership contract, or health care services agreement that provides coverage for maternity services, including benefits for childbirth, must provide coverage ***for at least 48 hours of inpatient hospital care*** *following a vaginal delivery and at least 96 hours of inpatient hospital care following delivery by cesarean section for a mother and newborn infant in a health care facility as defined in 50-5-101.*

(3) A decision to shorten the length of inpatient stay to less than that provided under subsection (2) must be made by the attending health care provider and the mother. A health benefit plan, as defined in 33-22-1803, may not terminate the service of an attending health care provider or penalize or otherwise provide financial disincentives to an attending health care provider in response to orders by the attending health care provider for care consistent with the provisions of this section.

(4) A health benefit plan that provides coverage for postdelivery care that is provided to a mother and newborn infant in the home may not be required to provide coverage of inpatient care under subsection (2) unless the inpatient care is determined to be medically necessary by the attending health care provider.

(5) A health benefit plan, as defined in 33-22-243, must provide written notice, in a manner consistent with the provisions of this chapter, to all enrollees, insureds, or subscribers regarding the coverage required by this section.

HB 390's reference to 24 hours is "discharged within 24 hours of the birth..." So that does not mean the person is discharged within 24 hours of entering the facility.

> **Difference here is in the insurer payment vs. the facility license and the difference between an inpatient facility and an outpatient facility.** To be licensed as an "in-patient" facility, the facility would need to implement fire and safety measures (sprinklers, special walls). As an "outpatient" birth center, the fire/safety issues are not as specific.

Scope of Practice vs. Facility License – as a facility operated by a non-physician.

Montana direct-entry nurse midwife rules, **24.111.610 HIGH-RISK PREGNANCY: CONDITIONS REQUIRING PRIMARY CARE BY A PHYSICAN**, adopted by the Alternative Health Care Board specify high-risk situations in which a primary care physician's help is needed.

The certified nurse midwives practice under a certificate as an advanced practice registered nurse. The rules adopted by the Board of Nursing reference guidelines established by a national professional organization:

24.159.1475 CERTIFIED NURSE MIDWIFERY PRACTICE

(1) Certified nurse midwifery (CNM) practice means the independent and/or collaborative management of care of essentially normal newborns, providing perinatal and general women's healthcare within a health care system that provides for medical consultation, collaborative management, and referral.

(2) All licensed CNMs shall be enrolled in either the certification maintenance program or the continuing competency assessment program through the American College of Nurse Midwives.

(3) Every licensed CNM shall abide by the practice standards and guidelines established by a CNM national professional organization as identified by the CNM.

The executive director of the Board of Nursing referenced in an email the American College of Nurse Midwives. The standards and scope of practice have not been found yet on their website, although there is a document that outlines guidelines. I have a call in to the education person trying to see what the scope of practice is considered to be.

Insurance/Money Issues

- In addition to the 48-hour issue mentioned above, there is the question of what Medicaid and insurance would cover.
    - **Medicaid** – Medicaid would pay facility payments in addition to provider payments if the facility meets national accreditation criteria. Medicaid pays APRN certified nurse midwives but not direct entry midwives (who are not APRNs or physicians). The department has no plan to expand Medicaid coverage to lay midwives.
    - **Insurers** – Blue Cross Blue Shield spokesperson Frank Cote said the facility and provider would have to meet BCBS credentialing requirements, which include having malpractice insurance. Susan Witte for Allegiance says: "Any services provided must be within the scope of the license." Allegiance pays for both APRNs and direct entry midwives operating as providers within their scope of practice. (email out for info from other insurers)
- **Liability** - This could significantly increase the costs of the birth center. (Green amendment (e-f)) The standards section of the American Association of Birth Centers – describing attributes for compliance with standards – includes: "(9) The center carries liability insurance. Where liability insurance is not available, the center notifies clients that the center does not carry liability insurance." Both groups mention certification by a national group like the American Association of Birth Centers.

Transfer/Collaboration Issues - Choices on Amendments:

- **Transfer issues** – one provides consultation with or transfer to another health care facility in the event of complications. (blue – sponsor (3)(b)). The other requires a transfer arrangement, notice of a delivery schedule (pink – (5)(f)). This latter could mean that, without assurance of being able to staff up to provide a surgical suite, anesthetist and pediatrician along with an ob/gyn for a complicated delivery, the hospital might not sign the agreement. Bottom line – federal law requires a hospital to accept emergency cases. Hospitals are trying to get information to help address emergencies more effectively. Both amendments help with information – but pink version is stricter than blue.
- **Collaboration issues** – Sponsor (plum) amendment states the birth center "must have access to a physician who has admitting privileges at the nearest appropriate hospital and who is available 24 hours a day to admit a birth center patient to the hospital in the event of an emergency." The Billings Clinic amendment (pink – (5)(e)) says "a collaborative agreement with a physician with admitting privileges at the nearest hospital by which the physician will take responsibility for the care of a patient in the event of an emergency admission of the patient to the hospital." DIFFERENCES: taking responsibility under the second version. Apparently there is some misunderstanding about whether the relationship with the doctor is an underlying relationship with a primary care doctor by the patient. Or is it a relationship between the birth center and a physician. Neither language is specific on this.

Blue sub (3)(e) identification of accreditation… similar to pink sub (5).
Plum sub (4) is unique
Blue 50-5-103 – allows department to write rules for/inspect birth centers. Needed by department.

Amendments to House Bill No. 390
3rd Reading Copy

For the Senate Business, Labor, and Economic Affairs Committee

Prepared by Pat Murdo
March 19, 2009 (8:51am)

1. Page 8, line 28.
Following: "center;"
Strike: "and"

2. Page 8., line 30
Following: "practice"
Insert: ";
(e) documentation of a current professional liability insurance policy in an amount designated by the department; and
(f) documentation of a current insurance policy that indemnifies and holds harmless a physician or a hospital that provides emergency obstetrical care or assistance to an outpatient birth center"

- END -

Amendments to House Bill No. 390
3rd Reading Copy

For the Senate Business, Labor, and Economic Affairs Committee

Prepared by Pat Murdo
March 19, 2009 (9:01am)

1. Page 8, line 28.
Following: "center;"
Strike: "and"

2. Page 8, line 30.
Following: "practice"
Insert: "and as provided in the collaborative agreement provided for in subsection (3)(e);

(e) a collaborative agreement with a physician with admitting privileges at the nearest hospital by which the physician takes responsibility for the care of a patient in the event of an emergency admission of the patient to the hospital; and

(f) a transfer arrangement with a hospital by which:

(i) the outpatient birth center provides notice to the hospital of the outpatient birth center's delivery schedule;

(ii) the outpatient birth center provides prior notice to the hospital of a transfer of a patient to the hospital in the event of an emergency; and

(iii) pertinent health care information accompanies the patient upon transfer to the hospital"

3. Page 9, line 1.
Strike: "(3)"
Insert: "(4)"
Renumber: subsequent subsection

4. Page 9.
Following: line 8
Insert: "(6) The department may require by rule that an outpatient birth center be accredited by a nationally recognized birth center accreditation organization."

- END -

Amendments to House Bill No. 390
3rd Reading Copy

Requested by Representative Michele Reinhart

For the Senate Business and Labor Committee

Prepared by Sue O'Connell
March 11, 2009 (10:17am)

1. Title, page 1, line 5.
Strike: "SECTION"
Insert: "SECTIONS"
Following: "50-5-101"
Insert: "AND 50-5-103"

2. Page 2.
Following: line 29
Insert: "(13) "Commission for the accreditation of birth centers" means the organization nationally recognized by that name that surveys outpatient birth centers upon their requests and grants accreditation status to outpatient birth centers that it finds meet its standards and requirements."
Renumber: subsequent subsections

3. Page 3, line 28.
Following: "mental health centers,"
Insert: "outpatient birth centers,"

4. Page 8, line 6.
Strike: "(56)"
Insert: "(57)"

5. Page 8.
Following: line 24
Insert: "(3) (a) A patient admitted to an outpatient birth center for labor and delivery must be discharged within 24 hours of the birth in accordance with standards as defined by rule.

(b) An outpatient birth center shall consult with or transfer care to a health care facility in the event of complications to the mother or newborn. If care is transferred to another health care facility, the outpatient birth center shall:

(i) before the transfer, provide notice to the health care facility, including the reason for transfer; and

(ii) during the transfer, provide the medical records related to the patient's condition."
Renumber: subsequent subsections

6. Page 8, line 28.
Following: ";"
Strike: "and"

7. Page 8, line 30.
Strike: "health care provider's scope of practice"
Insert: "patient's condition in the event of complications to the mother or newborn; and

(e) identification of accreditation by the commission for the accreditation of birth centers, if applicable, for purposes of meeting the licensing rules and standards as provided in 50-5-103"

8. Page 9.
Following: line 8
Insert: "Section 3. Section 50-5-103, MCA, is amended to read:

"50-5-103. Rules and standards -- accreditation. (1) The department shall adopt rules and minimum standards for implementation of parts 1 and 2.

(2) Any facility covered by this chapter shall comply with the state and federal requirements relating to construction, equipment, and fire and life safety.

(3) The department shall extend a reasonable time for compliance with rules for parts 1 and 2 upon adoption.

(4) Any hospital located in this state that furnishes written evidence required by the department, including the recommendation for future compliance statements to the department of its accreditation granted by the joint commission on accreditation of health care organizations, is eligible for licensure in the state for the accreditation period and may not be subjected to an inspection by the department for purposes of the licensing process. The department may, in addition to its inspection authority in 50-5-116, inspect any licensed health care facility to answer specific complaints made in writing by any person against the facility when the complaints pertain to licensing requirements. Inspection by the department upon a specific complaint made in writing pertaining to licensing requirements is limited to the specific area or condition of the health care facility to which the complaint pertains.

(5) The department may consider as eligible for licensure during the accreditation period any health care facility located in this state, other than a hospital, that furnishes written evidence, including the recommendation for future compliance statements, of its accreditation by the joint commission on accreditation of healthcare organizations. The department may inspect a health care facility considered eligible for licensure under this section to ensure compliance with state licensure standards.

(6) The department may consider as eligible for licensure during the accreditation period any rehabilitation facility that

furnishes written evidence, including the recommendation for future compliance statements, of accreditation of its programs by the commission on accreditation of rehabilitation facilities. The department may inspect a rehabilitation facility considered eligible for licensure under this section to ensure compliance with state licensure standards.

(7) The department may consider as eligible for licensure during the accreditation period any outpatient center for surgical services that furnishes written evidence, including the recommendation for future compliance statements, of accreditation of its programs by the accreditation association for ambulatory health care. The department may inspect an outpatient center for surgical services considered eligible for licensure under this section to ensure compliance with state licensure standards.

(8) The department may consider as eligible for licensure during the accreditation period any outpatient birth center that furnishes written evidence, including the recommendation for future compliance statements, of accreditation of its programs by the commission for the accreditation of birth centers. The department may inspect an outpatient birth center considered eligible for licensure under this section to ensure compliance with state licensure standards.

~~(8)~~(9) The department may consider as eligible for licensure during the accreditation period any behavioral treatment program, chemical dependency treatment program, residential treatment facility, or mental health center that furnishes written evidence, including the recommendation for future compliance statements, of accreditation of its programs by the council on accreditation. The department may inspect a behavioral treatment program, chemical dependency treatment program, residential treatment facility, or mental health center considered eligible for licensure under this section to ensure compliance with state licensure standards."

{*Internal References to 50-5-103:*

50-5-104x *50-5-207x* *50-5-207x* }"

Renumber: subsequent section

- END -

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Requested by Representative Michele Reinhart

For the Senate Business and Labor Committee

Prepared by Sue O'Connell
March 11, 2009 (10:20am)

1. Page 8.
Following: line 24
Insert: "(3) An outpatient birth center must have access to a physician who has admitting privileges at the nearest appropriate hospital and who is available 24 hours a day to admit a birth center patient to the hospital in the event of an emergency.

(4) A patient shall participate in decisions regarding referral to other practitioners or other levels of care in the event of complications."
Renumber: subsequent subsections

- END -